

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TEAM ONE DISPLAY SERVICES, INC.,

Plaintiff,

vs.

ARLON GRAPHICS, LLC.,

Defendant.

Case No. 2:15-cv-01185-JCM-GWF

ORDER

This matter is before the Court on Plaintiff's Motion to Strike or Motion for Leave to File a Five-Page Sur-Reply (#50), filed on December 7, 2015. Defendant filed its Opposition (#53) on December 23, 2015 and Plaintiff filed its Reply (#54) on January 4, 2016.

Plaintiff requests that the Court strike portions of Defendant's Reply in Support of Its Motion to Dismiss (#48), which allegedly presents new arguments in contravention of established law. Alternatively, Plaintiff requests that it be allowed to file a five (5) page sur-reply to respond to the alleged new arguments. Plaintiff first objects to Defendant's argument that the work at issue is not "original." Defendant asserts that its Reply (#48) merely responds to an argument Plaintiff raised in its Opposition (#45). The Court finds that Plaintiff raised the argument of originality in its Opposition (#45), however, it was not adequately developed. Thus, the Court finds that Plaintiff should be afforded the opportunity to fully address this issue.

Plaintiff also objects to Defendant's argument regarding Plaintiff's ability to recover fees and costs. Defendant's Opposition to Plaintiff's Motion to Strike (#53) fails to respond to this argument. Defendant's Reply in Support of Its Motion to Dismiss (#48) argues that Plaintiff cannot recover fees, costs, or statutory damages in this matter. *See Reply (#48) 8:22-10:27*. However, this

1 argument was neither in Defendant's Motion to Dismiss (#39) nor in Plaintiff's Opposition (#45) to
2 the same. As such, the Court finds that Defendant's argument relating to the recovery of fees,
3 costs, and damages should be stricken from its Reply in Support of Its Motion to Dismiss (#48).


4 Finally, Plaintiff objects to Defendant's Request for Judicial Notice (#49), which provides
5 the Court with new information that Plaintiff is unable to respond to. Once again, Defendant's
6 Opposition to Plaintiff's Motion to Dismiss (#53) fails to address Plaintiff's concerns. The Court
7 finds that Plaintiff should be able to address the materials attached to Defendant's Request for
8 Judicial Notice (#49), which are provided to support its Reply (#48). Accordingly,

9 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Strike or Motion for Leave to File a
10 Five-Page Sur-Reply (#50) is **granted**. Defendant's argument regarding Plaintiff's ability to
11 recover fees, costs, and damages shall be **stricken** from its Reply in Support of Its Motion to
12 Dismiss (#48).

13 **IT IS FURTHER ORDERED** that Plaintiff shall have until **January 22, 2016** in which to
14 file a five (5) page sur-reply addressing both the issue of originality and the material attached to
15 Defendant's Request for Judicial Notice (#49).

16 **IT IS FURTHER ORDERED** that Defendant shall have ten (10) days from the date of
17 service to file a five (5) page response to Plaintiff's sur-reply.

18 DATED this 11th day of January, 2016.

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21 GEORGE FOLEY, JR.
22 United States Magistrate Judge
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